Following the analogy of the liability of a carrier to its passengers for the torts of its servants on the basis of an implied contract to afford protection, an innkeeper has been held liable to his guest for the unauthorized tort of his servant. *Clancy* v. *Barker*, 71 Neb. 83; see 17 HARV. L. REV. 575. This case, however, presents the additional feature that no tort was committed, since only the plaintiff's personal feelings were injured. Such injury is not in general an actionable wrong. *Reed* v. *Maley*, 115 Ky. 816. But the implied contract of the carrier is extended so that it is liable to its passengers for mental suffering caused by the insults of its servants. *Gillespie* v. *Brooklyn Heights Ry. Co.*, 178 N. Y. 347. To follow the analogy of the carrier logically, the present defendant should be held liable, even though the act of his employee did not constitute a tort. And the analogy seems sufficiently close to sustain this extension. Both the carrier and the innkeeper are engaged in a public service, and their liabilities are based upon the same considerations of public policy.

INTERSTATE COMMERCE — CONTROL BY STATES — GARNISHMENT OF A CARRIER ENGAGED IN AN INTERSTATE SHIPMENT. — The plaintiff garnisheed a carrier in Georgia on account of the possession of a car of the defendant which was being used in shipping freight from another state into Georgia, and was intrusted to the garnishee under the usual agreement for forwarding the car and returning it on another shipment. *Semble*, that the garnishment would not be an unconstitutional interference with interstate commerce. *Southern, etc., Co.* v. *Northern Pac. Ry. Co.*, 127 Ga. 626.

Upon this point the case is the first to disagree with a number of contrary holdings criticized in 20 HARV. L. REV. 319.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — RECOVERY OF UNREASONABLE RATE BY SHIPPER. — The Interstate Commerce Commission declared a rate unreasonable and ordered a new rate. The plaintiff, a shipper, applied for restitution of the difference between the rate charged and that established by the Commission. *Held*, that he can recover. *Southern Ry. Co.* v. *Tift*, 206 U. S. 428.

It has been held that a shipper has no remedy in the courts until the Interstate Commerce Commission has passed on the reasonableness of a rate. *Texas, etc., Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426. See 20 HARV. L. REV. 576. But this is only a matter of procedure, not affecting the shipper's ultimate right not to be overcharged, if when a rate is declared unreasonable he can recover the excess previously paid. The court also, by dicta, limits the application of this rule of procedure to actions at law for damages, declaring that the Interstate Commerce Act leaves unimpaired the jurisdiction of a court of equity to restrain the enforcement of unreasonable rates.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — COMMERCE WITH NAVY YARDS UNDER EXCLUSIVE FEDERAL JURISDICTION. — A Virginia statute imposed a penalty on telegraph companies for failure to deliver messages. The defendant company failed to deliver a message sent from a point within the state to the plaintiff in the Norfolk Navy Yard, which was under the exclusive jurisdiction of the federal government. *Held*, that the Commerce Clause of the Constitution gives Congress no authority over this message such as to render the state statute inapplicable. *Western Union Telegraph Company* v. *Chiles*, 57 S. E. 587 (Va.).

The Commerce Clause, in regard to commerce "among the states," has been regarded as giving Congress exclusive jurisdiction only over commerce which concerns more than one *state*. See *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1. Yet it has been held that an act of the Legislative Assembly of the District of Columbia imposing a license on drummers is indistinguishable, as regards the Commerce Clause, from a similar state act, and therefore is void so far as applied to those soliciting for individuals outside the District. *Stoutenburgh* v. *Hennick*, 129 U. S. 141. The authority of Congress over places purchased by the consent of the legislature of a state for dockyards, etc., is like its author-

ity over the District of Columbia. *U. S.* v. *Cornell*, 2 Mason (U. S. C. C.) 60. Whether there is a difference, as regards commerce, between the District and land under the exclusive control of the federal government used for dock-yards, etc, has not been considered. On principle there is no ground for such a distinction. The case follows a dissenting opinion of Miller, J., holding that commerce "among the states" is commerce between the citizens of one state and those of another *state*. See *Stoutenburgh* v. *Hennick*, *supra*.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — COVENANT AGAINST ASSIGNMENT. — A lease contained a covenant against assignment by the lessee or others having his estate in the premises. The lessee devised his interest to his executors upon certain trusts, and they transferred the estate to themselves as trustees. *Held*, that there is no breach of the covenant. *Squire* v. *Learned*, 81 N. E. 880 (Mass.).

Two views are possible as to the scope of a covenant against assignment. One is that only an alienation *inter vivos* by the lessee is forbidden; the other, that the covenant also forbids testamentary disposition. An early case took the distinction that, while in general a devise is a breach, it is permitted if the devisee be named executor. *Windsor* v. *Burry*, Dyer 45 *b*, note. This seems erroneous, since the executor as devisee is as distinct as any stranger from the executor as such. The only justification for the present decision must lie in the proposition that a devise of the leasehold estate is not a breach of a covenant not to assign. *Fox* v. *Swann*, Styles 482; *contra*, *Barry* v. *Stanton*, Cro. Eliz. 330. It is no breach for the lessee's administrator to transfer the estate to the next of kin, or to sell it as assets. *Seers* v. *Hind*, 1 Ves. Jr. 294. Hence it would seem that a true construction of the covenant should likewise allow a testamentary disposition by the lessee. The object of the covenant is to keep the term out of objectionable hands; and this purpose is as likely to be defeated if the lessee dies intestate as if he directs to whom it shall pass at his death.

LEGACIES AND DEVISES — ABATEMENT — LEGACY IN SATISFACTION OF A DEBT. — The testator bequeathed £3,000 to the trustees of his daughter's marriage settlement in satisfaction of his covenant to pay them £1,000. *Held*, that the legacy abated equally with other general legacies. *In re Wedmore*, [1907] 2 Ch. 277.

Priority of one general legacy over another is not allowed without clear proof that such was the testator's intention. *Appeal of the Trustees*, 97 Pa. St. 187. But a legacy sustained by valuable consideration is favored on the principle that the legatee is a purchaser for value. *Blower* v. *Morret*, 2 Ves. 420; *Reynolds* v. *Reynolds*, 27 R. I. 520. This seems correct when a bequest is made in satisfaction of an unliquidated claim against the testator's estate, for any excess of the legacy over the actual value of the claim is compensation to the creditor for waiving his chance of recovering a greater sum by litigation. See *Borden* v. *Jenks*, 140 Mass. 562, 564. This consideration does not apply, however, where the legatee's claim was already liquidated, since the creditor then runs no risk of loss by accepting the legacy instead of suing for his debt. There is then no basis for a conclusion that the legacy, at least any sum in excess of the testator's liability, was intended to be paid before bequests to volunteers, and the principal case seems correct. If, however, the legacy abates below the value of his claim, the legatee may waive it and recover as a creditor. See *Collins* v. *Cloyd*, 29 S. W. 735 (Ky.).

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — SUIT BY CORPORATION. — The defendants published an article which stated that an officer of the plaintiff corporation was an ex-criminal and "a tout sleek enough in his methods to have corralled bankers and brokers of unimpeachable legitimacy as clients for the New York Bureau of Information." *Held*, that the article is a libel *per se* for which the plaintiff may recover. *New York Bureau of Information* v. *Ridgway-Thayer Company*, 104 N. Y. Supp. 202 (App. Div.).